Supreme Court, U.S.
FILED
SEP 30 1992
OFFICE OF THE CLERK

No. 92-374

In The

# Supreme Court of the United States

October Term, 1992

ROBERT J. STANDRING,

*Petitioner,*

*vs.*

RALPH A. MCALLISTER,

*Respondent.*

*On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit*

## RESPONDENT'S BRIEF IN OPPOSITION

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## QUESTIONS PRESENTED FOR REVIEW

Whether respondent, Judge Ralph A. McAllister, has absolute judicial immunity from suit brought pursuant to 42 U.S.C. § 1983 for acts committed within his official capacity and judicial jurisdiction.

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## RESPONDENT'S BRIEF IN OPPOSITION

## OPINIONS BELOW

1. July 19, 1992 Report and Recommendation (Petitioner's Writ, App. C) (R28) *Standring v. McAllister*, Case No. 1:91 CV 381, U.S.D.C., N.D. Ohio, E.D., Magistrate Judge J. W. Bartunek.

2. January 31, 1992 Order Adopting Report and Recommendation (R39).

3. June 18, 1992 Order Affirming District Court's Judgment (Petitioner's Writ, App. B) *Standring v. McAllister*, Case No. 92-3164, United States Court of Appeals, Sixth Circuit, Judges Keith, Ryan and Krupansky.

## STATEMENT OF JURISDICTION

Petitioner invokes jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISION, RULE AND STATUTE INVOLVED

1. Supreme Court Rule 10.

2. 42 U.S.C. § 1983:

> Civil Action for Deprivation of Rights.
>
> Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any state or territory or district of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress. For the purposes of this section, any act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

3. United States Constitution, Eleventh Amendment:

> The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

## SUMMARY OF ARGUMENT

1. Petitioner's writ of certiorari should be denied because it requests the Court to restrict the doctrine of judicial immunity, forcing members of the judiciary to answer in court to any allegation of judicial misconduct made by an unhappy litigant.

2. Respondent is immune from liability under *Stump v. Sparkman*, 435 U.S. 349 (1978), because the alleged misconduct occurred while respondent had jurisdiction and was presiding over the *Xerox* action.

3. Under the doctrine of judicial immunity, respondent is not required to demonstrate that his conduct during the *Xerox* action was reasonable under the circumstances or that he acted in good faith.

## STATEMENT OF THE CASE

This matter arises from a Complaint filed on March 1, 1991 in the United States District Court, Northern District of Ohio by petitioner Robert J. Standring ("petitioner") against respondent, the Honorable Ralph A. McAllister ("Judge McAllister"), a Cuyahoga County Common Pleas Judge (R1). The case was referred to Magistrate Judge Joseph W. Bartunek (R3). The Complaint alleges deprivation of petitioner's constitutional rights during a civil action styled *Xerox Corporation v. Standring*, Case No. 186651, Cuyahoga County Court of Common Pleas ("*Xerox* case") (R1). As set forth in the Complaint, Judge McAllister was the presiding judge over that civil action in which petitioner was the defendant (R1).

Petitioner alleges in his Complaint that during the course of proceedings in the *Xerox* case, Judge McAllister denied various discovery motions (R1, ¶ 2.2); secretly advanced the trial date

without benefit of written notice and timely journal entry (R1, ¶ 2.4); deprived him of the right to trial by jury (R1, ¶ 2.5); during the trial, improperly excluded material evidence, made prejudicial remarks, coached witnesses to give false testimony (R1, ¶ 2.6); conspired with defense counsel and made false entries upon the court's docket (R1, ¶ 2.7); and excluded expert testimony (R1, ¶ 3.4).

All the conduct complained of in petitioner's complaint occurred while Judge McAllister was acting as a judge and within the bounds of his jurisdiction. Consequently, on March 15, 1991, a motion to dismiss based upon the doctrine of judicial immunity was filed pursuant to Fed. R. Civ. P. 12(b)(6) (R4). Petitioner filed his Memorandum in Opposition to the Motion to Dismiss on March 22, 1991 (R6). Judge McAllister filed his Reply Memorandum Instanter in Support of Motion to Dismiss Complaint on March 26, 1991 (R9). Petition filed his Motion for Leave to File a Memorandum to Support Overruling Defendant's Motion to Dismiss on April 1, 1991 (R8).

On July 18, 1991 Magistrate Judge J.W. Bartunek filed his Report and Recommendation granting Judge McAllister's Motion to Dismiss based on judicial immunity (R28). Petitioner filed his objections to the Magistrate's Report and Recommendation on July 29, 1992 (R35). The District Court Judge conducted a *de novo* review of the record and adopted the Report and Recommendation on January 31, 1992, granting Judge McAllister's Motion to Dismiss (R39).

On February 11, 1992, petitioner filed his Notice of Appeal to the United States Court of Appeals for the Sixth Circuit (R40). The Sixth Circuit affirmed the District Court's Judgment dismissing petitioner's action on June 18, 1992 (Petitioner's Writ, App. B).

Petitioner filed a Petition for Rehearing En Banc on June 29,

1992, which was denied by the Sixth Circuit on August 13, 1992. The instant appeal followed.

## REASONS FOR DENYING THE WRIT

### I.

### PETITIONER'S WRIT OF CERTIORARI SHOULD BE DENIED BECAUSE IT PRESENTS AN ISSUE ALREADY DECIDED BY THE UNITED STATES SUPREME COURT AND FAILS TO SATISFY THE CHARACTER OF REASONS THE COURT WILL CONSIDER FOR REVIEW UNDER SUPREME COURT RULE 10.

The review of a petition for writ of certiorari is governed by Supreme Court Rule 10. A petition for writ of certiorari is granted only for special and important reasons. *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 74 (1955). Rule 10 provides that although not controlling or fully measuring the Court's discretion, the following indicate the character of reasons that will be considered by the Court:

> (a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> (b) When a state court of last resort has decided a federal question in a way that

> court of last resort or of a United States court of appeals.
>
> (c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

Petitioner has failed to state any reason, under Rule 10 or otherwise, that would convince the Court to grant petitioner's writ. The question presented for review does not involve a special or important issue not previously decided by the Court. Moreover, it does not satisfy the character of reasons the Court will consider for review. There is no conflict between the Circuit Courts, between the federal and state courts or a question of federal law which conflicts with an applicable decision of the United States Supreme Court. The decision rendered by the District Court and affirmed by the Sixth Circuit directly supports and follows from this Court's decision in *Stump v. Sparkman*, 425 U.S. 349 (1978).

Petitioner argues that the Court should grant his writ because the instant action provides the Court with an opportunity to establish guidelines with respect to the type of judicial conduct that constitutes the clear absence of jurisdiction. The Court does not need such an opportunity. Guidelines regarding the application of judicial immunity were established in *Stump v. Sparkman*, 435 U.S. 349 (1978). It is clear from the *Stump* decision that if the conduct in question is the kind normally performed by a judge (*i.e.*, judicial acts), and the plaintiff was dealing with the judge in his judicial capacity, the doctrine of judicial immunity applies in a given action.

What petitioner is really asking the Court to do is to restrict the doctrine of judicial immunity. However, restricting absolute

judicial immunity is contrary to all established precedent and completely unnecessary. When a litigant believes that a presiding judge has committed error, the litigant may seek his remedy through appellate review, not by suing the presiding judge.

## II.

## JUDGE MCALLISTER HAS ABSOLUTE JUDICIAL IMMUNITY FROM LIABILITY FOR THE CLAIMS ASSERTED BY PETITIONER UNDER 42 U.S.C. § 1983.

It is a firmly established doctrine of law that a judge is absolutely immune from suit for acts committed within his or her official capacity and judicial jurisdiction. This long-standing legal principle, established at common law, was first recognized by the United States Supreme Court in *Bradley v. Fisher*, 13 Wall 335 (1872). As stated more recently by the Court in *Pierson v. Ray*, 386 U.S. 547, 554 (1967):

> It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decision-making but to intimidation.

The Court further held that the doctrine of judicial immunity applies in suits premised on alleged civil rights violations under 42 U.S.C. § 1983, as in the instant action. *Pierson*, 386 U.S. at 356; *Scarso v. Cuyahoga County Dept. of Human Services*, 747 F. Supp. 381, 385 (N.D. Ohio 1989).

A judge is not deprived of immunity even if the actions he took were in error, were done maliciously or in excess of his authority. A judge is subject to liability *only* when he acts in the clear absence of all jurisdiction.[1] *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978); *Campbell v. Patterson*, 724 F.2d 41, 43 (6th Cir. 1983); *Flip v. Flanagan*, 729 F. Supp. 1149, 1152 (N.D. Ohio 1989).

Thus, any action allegedly taken by Judge McAllister with respect to discovery Motions, rescheduling of trial, procedural errors, exclusion of evidence or false entries upon the court's docket were done while he had jurisdiction over the subject matter of the action and he is immune from liability. The mere fact that Judge McAllister "returned to the courtroom out of robe" during a trial recess does not mean that Judge McAllister was acting without jurisdiction as petitioner implies at page 9 of his writ.

In *Stump v. Sparkman*, 435 U.S. 349, 355-57 (1978), the Supreme Court set forth a simple two-part test to determine whether judicial immunity applies in a given action:

1. Whether the general conduct in question is the kind normally performed by a judge (i.e., judicial acts); and

2. Whether the plaintiff was dealing with the judge in his judicial capacity.

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1. Petitioner's statement in his writ at footnote one, that respondent previously relied on judicial immunity pursuant to the Eleventh Amendment as a defense to this action, misstates the facts. Respondent has never relied on a qualified immunity defense pursuant to the Eleventh Amendment. Respondent's defense is, and always has been, common law judicial immunity. Throughout this action, petitioner consistently confuses qualified immunity of state officials under the Eleventh Amendment with absolute judicial immunity.

Application of the *Stumps* test to the case at bar reveals that all the allegations contained in the Complaint are premised upon Judge McAllister's conduct pursuant to and occurring during the course of the *Xerox* case. In fact, no challenge or question is presented in the Complaint that Judge McAllister is a lawful, and duly elected judge of the Cuyahoga County Common Pleas Court and that he had jurisdiction over the matter on his docket. Further, there is no question that the petitioner dealt with Judge McAllister exclusively in a judicial capacity.

A review of petitioner's Complaint and Magistrate Bartunek's comments in his Report and Recommendation (R28) confirm petitioner's failure to state a claim:

> Plaintiff makes no allegation in his Complaint that defendant acted in a clear absence of all jurisdiction. Rather all plaintiff's assertions involve actions of the defendant which pertained to and occurred during plaintiff's trial, which was properly before the defendant. . . . Since the Complaint does not even allege the absence of jurisdiction, defendant is immune from any civil liability. Thus, plaintiff has failed to state a claim upon which relief can be granted.

Therefore, the doctrine of judicial immunity bars the instant action absent any allegaton by petitioner that Judge McAllister acted outside his jurisdiction. For example, in *Eades v. Sterlinske*, 810 F.2d 723 (7th Cir. 1987), the plaintiff alleged that a state court judge had violated her constitutional rights by fraudulently altering the trial transcript and docket sheet. The Seventh Circuit affirmed the district court's order of dismissal based upon absolute judicial immunity.

In *Rolleston v. Eldridge*, 848 F.2d 163 (11th Cir. 1988), a party sought to hold a state court judge liable under 42 U.S.C. § 1983, for allegedly ignoring state procedural rules by dismissing a claim without a hearing. Again, the appellate court affirmed the district court's dismissal of the Complaint based on the doctrine of judicial immunity.

Remarkably similar to the instant case, is *Dieu v. Norton*, 411 F.2d 761 (7th Cir. 1969), where the plaintiff sought to recover damages from a state court judge who allegedly violated the party's civil rights by conspiring with defense counsel and directing a verdict in the defendant's favor. The court found that the judge was protected by the doctrine of judicial immunity. As in the other authorities cited above, a dismissal of the Complaint for failure to state a claim which relief could be granted was affirmed by the Seventh Circuit Court of Appeals.

Finally, the Supreme Court in *Forrester v. White*, 484 U.S. 219, 108 S. Ct. 538, 544 (1988), in discussing the purposes served by judicial immunity from liability in damages, wrote:

> If judges were personally liable for erroneous decisions, the resulting avalanche of suits, most of them frivolous but vexatious, would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits. . . . The resulting timidity would be hard to detect or control, and it would manifestly detract from independent and impartial adjudication. Nor are suits against judges the only available means through which litigants can protect themselves from the consequences of judicial error. Most judicial mistakes or wrongs are open to correction through ordinary mechanisms of

> review, which are largely free of the harmful side-effects inevitably associated with exposing judges to personal liability.

Thus, Judge McAllister is immune from any civil liability because of petitioner's failure to allege any set of facts demonstrating that Judge McAllister's conduct during the *Xerox* case occurred in the absence of jurisdiction.

Relief from adverse judgment in the *Xerox* case was available to petitioners by way of appellate review. As noted by petitioner in his writ at footnote two, he has availed himself to this remedy. The state appellate court is the proper and *only* channel through which petitioner may be entitled to relief, not the instant action.

## III.

## QUALIFIED IMMUNITY UNDER THE ELEVENTH AMENDMENT DOES NOT APPLY IN THIS ACTION.

Qualified Immunity for state officials under the Eleventh Amendment has nothing whatsoever to do with this action, and petitioner's reliance on *Scheuer v. Rhodes*, 416 U.S. 232 (1974) as controlling precedent is simply misplaced and wrong. *Scheuer* involved state officials (not judges) acting as officers of the state and the scope of the qualified immunity defense available to state executive officers with respect to their actions taken under color of state law. The defense of qualified immunity is distinct from the absolute judicial immunity defense asserted by Judge McAllister in the instant action. A qualified immunity is available to officers of the executive branch of government depending on the scope of discretion and responsibilities of the office, and the existence of reasonable grounds and a good faith belief for the acts performed in the course of official conduct. *Scheuer*, 416 U.S. at 247-48.

Judge McAllister does not have this burden in the case at bar. He is a member of the judiciary, not executive, branch of the government. As a member of the judiciary, he is not required to demonstrate the reasonableness of his actions or that he acted in good faith. Judge McAllister is entitled to absolute immunity even if the actions he took were in error, done maliciously or in excess of his authority, as long as he acted with jurisdiction over the subject matter before him. *Stump v. Sparkman*, 435 U.S. at 356-57; *Campbell v. Patterson*, 724 F.2d at 43; *Flip v. Flanagan*, 729 F. Supp. at 1152. Petitioner's own cited case law supports this contention.

In *Scheuer*, this Court discussed the scope of judicial immunity under 42 U.S.C. § 1983. *Citing Pierson v. Ray*, 386 U.S. 547 (1967) this Court stated that the legislative history of 42 U.S.C. § 1983 does not abolish wholesale all common law immunities and if Congress had intended to do so, it would have specifically abolished judicial immunity. *Scheuer* at 244. Thus, a judge has absolute immunity from liability under 42 U.S.C. § 1983 for acts committed within his judicial jurisdiction.

## CONCLUSION

This case is a classic example of the application of judicial immunity. Petitioner's Complaint fails to allege any facts that demonstrate Judge McAllister acted in the clear absence of all jurisdiction. Therefore, the district court properly granted Judge McAllister's Motion to Dismiss.

Accordingly, Judge McAllister respectfully requests the Court to deny petitioner's writ for certiorari.

Respectfully submitted,

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